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No. 09-___

IN THE
**Supreme Court of the United States**

MICHAEL HALLIWELL & JAMES PARKER,

*Petitioners,*

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

*Respondent,*

CHRYSANTHE PAXINOS,

*Real Party in Interest*

On Petition for a Writ of Certiorari
To the California Supreme Court

# PETITION FOR A WRIT OF CERTIORARI

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
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April 20, 2009

## QUESTIONS PRESENTED

**1. Tenants Limited to Arms-Length Ex Parte Input** Whether restricting tenants to Ex Parte (on the papers only) Applications during pre-trial proceedings, which require a statement of grievances 24 hours in advance, with the landlord's attorney providing an opposing Declaration when he appears at the "hearing" (which provides no contact with the judge making the decision and no opportunity for a written response to the opposing Declaration), constitutes a deprivation of Due Process of Law.

**2. No Recourse When Meet & Confer Rule Violated** Whether consistent and total refusal of a landlord's attorney to discuss any aspect of the case or its proceedings with self represented tenants (a direct violation of Local Rule 5.7D, when he opposes an Ex Parte Application) constitutes a violation of Due Process of Law, when **a)** the ONLY follow-up allowed under the very tight pre-trial time frame seeks enforcement of Local Rule 5.7D, and **b)** the Court's denial Order claims "not to understand the relief sought" and rules against Defendants because "the moving party will have an opportunity to present defenses at trial."

**3. No Remedy for Perjury by Landlord's Attorney** Whether Due Process of Law requires immediate recourse for a tenant who is deprived of ten days of preparation time by false claims of personal service, and is deprived of any opportunity for discovery because a landlord's Trial Date Request (Form UD-150) is never provided to the tenant (in spite of a sworn statement on the form that it was served on Defendant).

**4. Sonoma Court's First-Available Trial-Date Policy** Whether California's system whereby the landlord must be given a trial within 20 days of his

request, with the date being set after five days are allowed for a response by the tenants, constitutes a deprivation of Equal Protection of the Laws, when **a)** recipients of eviction notices are referred to this policy on the Summons by reference to a Self-Help website and **b)** Sonoma County has an unannounced policy of automatically giving the landlord the first available trial date (belatedly admitted in appeal briefing by the landlord's attorney).

**5. UD-150 Trial-Date-Request Case File Tampering** Whether a fraudulent insertion of this document into the Case File (stamped June 6, 2007, when its absence from the file on June 11, 2007 through June 19, 2007 has been documented) constitutes a deprivation of Due Process of Law; and whether a duly filed and paid for appeal on this subject may be ignored by the Appellate Branch, without depriving a tenant facing eviction of Equal Protection of the Laws.

**6. Court Squelches Challenge to Trial Date Setting** Whether Defendants were denied Due Process of Law, when they were threatened with a contempt of court fine or jail sentence, if they did not desist from challenging the fairness of the Sonoma County Superior Court's process for trial-date setting in Unlawful Detainer actions (which limited discovery to voluntary disclosures by the landlord).

**7. $4000 Payment Coercion Was Hidden from Jury** Whether Sonoma County's procedure for out-of-court settlement of Unlawful Detainer actions deprives tenants of Due Process of Law when **a)** Sonoma County Superior Court has a Local Rule (2.2E) setting the full allowable attorney's fee at $375 for a normal court trial, **b)** at a time when Judge Nadler had indicated he intended to deprive Defendants of a jury trial, opposing counsel demanded a UNREVIEWABLE payment of $4,000

for allowing Defendants time to look for another place to live before they voluntarily moved out and **c)** Judge Rushing refused to allow Defendants to include in their case evidence that Plaintiff's counsel was using this action as an attorney's fees generation device (as opposed to amicably restoring control of the premises to the landlord) and threatened Defendants with a contempt of court sanction, should this subject be mentioned in front of the jury.

**8. Defendants Hurt by Assaults on Right to Jury** Whether Defendants were denied Due Process of Law when **a)** Judge Nadler originally denied the jury trial requested by Defendants on the ground that they had put the address of the property in the wrong place on their counter request (Form UD-150) and **b)** reversed this decision in response to a reconsideration motion from Defendants, and allowed the case to go to a jury, but deprived Defendants' of ¾ of the preparation time for proposed jury instructions they were entitled to under Local Rule 4.10H(1), on the ground that they should have brought proposed jury instructions with them in addition to their reconsideration motion.

**9. Service Perjury Used to Abort Discovery Process** Whether demonstrable perjury to gain tactical advantage in an eviction action can be presented to the jury as evidence of bad faith by the landlord; and whether this whole subject can be brushed aside, without violating Due Process of law, by a judge's edict that "In the Court's view, the defendants were trying to go backwards. My job is to move the case forward."

**10. Service Perjury Used to Abort Discovery Process** Whether Defendants were denied Due Process of Law when, as a result of perjury a five-days-before-trial deadline for discovery allowed Plaintiff to "run out the clock" on requests for infor-

mation contained in Form (UD-106) Interrogatories 71.7 & 77.1; and whether a litigant injured by a violation of California's Business & Professions Code Sec 6068(d), can secure immediate appropriate corrective action to enforce its mandate that members of the bar "shall employ, for the purposes of maintaining the causes confided to the member such means only as are consistent with truth."

**11. Reopening of Discovery after New Trial Date** Whether the refusal of Plaintiff's counsel to "meet and confer" as required by discovery rules, and his refusal to respond to Form Interrogatories 71.7 & 77.1, made the reopening of discovery (as provided by governing precedent) a matter of essential Due Process of Law, when the trial date was shifted from June 19, 2007 to June 25, 2007 (as a result of PLAINTIFF'S frivolous challenges to Defendants' right to a jury trial and a resulting conflict with the original judge's vacation plans).

**12. Denial of Caselaw-Based Jury Instruction Input** Whether Defendants' Federal Due Process rights were violated by Judge Rushing's refusal to allow ANY input into jury instructions by Defendants (after the case had been transferred to her by Judge Nadler), because their proposed instructions were based on analysis of governing precedents, not picking their proposals from among BAJI and CALJIC standard instructions (and would have required Judge Rushing to "do a lot of work" analyzing the underlying caselaw).

**13. Tenants Barred from Proceedings against Them** Whether the disallowance of restrictive covenants in *Shelley v Kraemer* (1948) 334 U.S. 1, 14, 20 is a federal barrier to arbitrary discrimination against tenants, which curtails their right to participate in Homeowner's Association proceedings (tenants may not attend without

sponsorship by the landlord) for enforcement of CC & R's (Conditions, Covenants and Restrictions) even though homeowners have full rights to participate (Defendants were denied the right to know the nature of charges against them, in spite of their persistent inquiries on this subject).

**14. Complete Bypassing of Arbitrary Discrimination** Whether the holding of *Marina v Wolfson* ("in California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment or [homeowner's] discretion to accept and reject tenants on the basis of the landlord's own likes and dislikes.") remains merely dicta when the State Legislature has cited and embraced (in AB 1400 in 2006) a holding (of *Koebke v Bernardo Heights Country Club*) that "We conclude in enacting the Unruh Act, the Legislature intended to ban all forms of arbitrary discrimination in public accommodations." Is a judge's elimination of all mention of California laws against arbitrary discrimination from jury instructions (over Defendants' strong protests) a denial of Equal Protection of the Laws.

**15. Disallowing "Too Recent" Retaliation Evidence** Whether barring all evidence of improper landlord motives and actions after the issuance of the 60-Day Notice to Quit on March 28, 2007 (in spite of provisions in Civil Code Sec 1942.5 which places a burden on the landlord to prove a non-retaliatory purpose for all actions taken six months before his lawsuit was filed on June 1, 2007 and the same period before eviction on July 3, 2007), constitutes a deprivation of Due Process of Law.

**16. Keeping Out Halliwell Eviction Notice Evidence** Whether Judge Rushing's preclusion of all evidence of improper landlord motivation in issuing a 3-Day Notice to Quit re Defendant Michael

Halliwell's occupancy (after Halliwell wrote to the landlord indicating his intention to support James Parker's Sixth Amendment right to know the nature of charges against him and to confront his accusers), constitutes a violation of State and Federal laws against arbitrary discrimination, and a denial of Equal Protection of the Laws to Michael Halliwell.

**17. Letting in Anonymous Compilation of Hearsay** Whether admission of an anonymous compilation of second and third hand hearsay complaints, where all of the names included in the document were redacted (Plaintiff's Exhibit 5), over Defendants strong prior and immediate subsequent protests (on the ground Defendants failed to notice that this Report by "a neighbor" was stapled to one of 24 letters that were dumped on their desk, which they had only 30 minutes to study), constitutes such unreliable evidence that it violates Due Process of Law.

**18. Central Importance of Anonymous Hearsay Report** Does invoking California Evidence Code Sec 352 (evidence more time consuming than probative) by Judge Rushing to allow Defendants to analyze only 16 of 39 lines of a page of anonymously compiled hearsay complaints; and refusal to reverse (by the Appellate Branch Order of March 6, 2007) on the ground that this Exhibit didn't have decisive impact (despite the landlord's testimony that this Report by the Homeowners' Association was his sole reason for eviction), constitute a Denial of Equal Protection of the Laws?

**19. Concealment and Backing Off re Proving Cause** Whether **a)** the "best evidence" rule was violated by not attaching the March 26, 2007 Homeowners Association Report to Plaintiff's March 28, 2007 Notice to Quit, but only referring to it in an attached February 20, 2007 Notice of Hearing and **b)**

whether the withdrawal at trial of the basis of the 60-Day Notice, "This Termination is For Cause", and relying on a landlord's right to evict at will, made the exclusion from evidence of the Opening Complaint (where the 60-Day Notice was attached), a denial of Due Process of Law.

**20. No Contract Violation Means No Fees Shifting** Whether Plaintiff's abandoning any effort to show cause, (where Paragraph #13 of the rental agreement provides for attorney's fees only in lawsuits "to enforce any provision of this agreement" and Civil Code Sec 1717 limits shifting attorney's fees only to provide compensation for proven contract violations) eliminates any basis for requiring to Defendant to pay Plaintiff's legal costs.

**21. Evasive Maneuvers re Status of Fees Motion** Whether **a)** the refusal of Plaintiff's attorney to "meet and confer" to discuss possible settlement "in accordance with applicable law" (as required by Local Rule 5.5) and **b)** his refusal be bring his July 3, 2007 fees motion before the court by listing the known (August 28, 2007) time and place of the hearing on the face sheet (as required by Local Rule 18.8) and **c)** not providing an endorsed filed copy of the motion when filed (which was promised by the letter of conveyance, which described the accompanying document as an unfiled motion given to Defendants to facilitate negotiation over the amount of fees), constituted an effort to win by flouting procedural rules, and thereby outmaneuver unrepresented Defendants, in violation of Due Process of Law.

**22. Tentative Ruling's False Claim of "No Opposition"** Whether the issuance of a Tentative Ruling (which violated Local Rule 2.2D, and was later withdrawn) and using James Parker's (falsely) alleged failure to oppose the fees motion (which

Plaintiff's counsel used as a basis to try to implement the Tentative Ruling by handing his proposed Judgment After Motion to Judge Rushing's assistant and mailing it so it reached Defendants several days later) constituted a deprivation of Due Process of Law.

**23. Filing Ban in Order Vacating Tentative Ruling** Whether Judge Rushing's September 5, 2007 Order barring any replacement filings by James Parker (for filings by Michael Halliwell which she refused to consider because of Defendant Halliwell's alleged lack of standing to address fees issues), constitutes a deprivation of Due Process of Law.

**24. Evasion of Plain Meaning of Notices of Appeal** Whether vacating the $10,000 attorney's fees award made by Judge Rushing's August 28, 2007 Tentative Ruling, (after both James Parker and Michael Halliwell signed a Notice of Appeal against it), and then ignoring Defendants' September 26, 2007 Notice of Appeal after the $10,000 fees award was reinstated (because only Michael Halliwell signed it, as is authorized by *Ehret v Ichioka* (1967) 247 Cal.App.2d 637, 640-641) in direct violation of the mandate of California Rules of Court Rule 8.750(a) (which requires that Notices of Appeal be liberally construed in support of their sufficiency), constitutes a violation Due Process of Law.

**25. Unfairness of No-Notice Switch on Standing** Whether a no-notice reversal of Judge Rushing's recognition of Defendant Michael Halliwell's right to seek a continuance of a fees hearing (and granting his motion), in the face of Plaintiff's explicit challenge to Defendant Halliwell's standing, constituted a denial of Due Process of Law to Defendant James Parker, when he was forced to defend aspects of the case previously managed by Defendant Halliwell (with NO opportunity to prepare to do so).

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## PETITION FOR A WRIT OF CERTIORARI

This Petition for Certiorari to the California Supreme Court seeks review of an aspect of the case (S168827) with an arguable federal appeal deadline of April 21, 2009. If it is possible, Appellants seek to consolidate the subject matter of this Petition, with whatever the disposition may be of their invocation of California Code of Civil Procedure Sec 1086 in S171792, where the California Supreme Court has informed the parties (in its letter of April 6, 2009):

> The court has granted permission to file the petition for review with appendix and the petition was filed today. An answer to the petition may be served and filed before 4-27-2009, twenty (20) days after the petition is filed. The answer may present additional issues desired for review if the petition for review is granted. A reply to the answer may be filed within 10 days after filing of the answer, limited to the additional issues presented in the answer, if any.

**Of crucial importance in the several intertwined appealable fees orders in this case,**

**is the willingness of California courts with the power of discretionary review to accept Defendants' Appendices (giving the contexts of the trial court rulings being appealed and their handling by the Appellate Branch).** The Opinion Below dealt with a trial court judgment (drafted by Plaintiff's counsel) which said (without ANY additional explanation): "Judgment for Plaintiff CHRYSANTHE E. PAXINOS against Defendant JAMES PARKER for attorney's fees in the amount of $10,000." In spite of its acknowledgment that the Transcript of the September 25, 2007 Hearing (where Judge Rushing announced she would award the $10,000 to Plaintiff's attorney) was NOT part of the record on appeal, the Appellate Branch Order of March 6, 2008 "reached out" to rule in favor of this fees award, because "This reviewing Court is treating this as an appeal by both defendants from

the judgment and from any post-judgment orders."

Before declining to review this first affirmance of the $10,000 fees award (in S163276), the California Supreme Court refused to accept Appellants' proffered Appendices A & B (which included the September 25, **2007** Hearing Transcript and Defendants' analysis thereof).

However (after eight months of "procedural war games"), the Appellate Branch was persuaded to consider (at its hearing of September 25, **2008**), the fees award made by Judge Rushing a year earlier, in light of the long-delayed transcript and related briefing. When this matter reached the California Supreme Court (in S168827), the procedural evasions used to preclude earlier adjudication of **MERITS** of the $10,000 fees award were addressed our Appendix C (which argued in its motion seeking approval for the filing of this document): "THE APPEARANCE

OF JUSTICE IS AS IMPORTANT AS A PROPER DISPOSITION OF THE UNDERLYING ISSUE, AND IT SHOULD NOT APPEAR TO A REASONABLE PERSON FAMILIAR WITH THE FACTS OF THE CASE AT BAR, THAT PAGE CONSUMING DOCUMENTATION OF DELIBERATE DENIALS OF DUE PROCESS MADE IT IMPOSSIBLE TO RAISE THE ISSUES SET FORTH IN THIS APPENDIX." In spite of the fact that acceptance of an extended appendix was a rare departure from its usual practice (according to court clerks), the California Supreme Court accepted Appendix C, (but ended up denying review, giving rise to **this** petition).

After the California Supreme Court also accepted our Appendices D, E, and F (mostly related to ongoing evasive maneuvers in the case, which Defendants will address in a future Federal appeal if necessary), we were encouraged enough to include

crucial Hearing Transcript excerpts and analysis from our rejected Appendices A & B, in our Appendix G in support of a direct Mandamus Appeal to the California Supreme Court (S170538). The details of the procedural relief requested in this February 17, 2009 Appeal, have been changed by Updates (and the case number has been changed to S171792, after a remand to the First District Court of Appeal to get our Mandamus Petition onto a normal procedural pathway), but it appears certain that a decision by the California Supreme Court (when it comes) will be based on a better understanding of the $10,000 fees award than when this matter was first raised on appeal. As explained below, our primary request for relief in this Petition is for relief from deadline pressure, until the California Supreme Court has either wrapped up its consideration of attorney's fees

awarded by the trial court, or indicated that it will not review this matter.

## OPINION BELOW

The Appellate Branch Opinion of October 7, 2008 has an initial paragraph, noting that Defendants' appeal was set for oral argument on September 25, 2008, before Judges Rene Auguste Chouteau, Dana Beernink Simonds and Gary Medvigy. In its second paragraph the Opinion notes that both counsels for Plaintiff (Charles Jensen and Kadin Blonski) and both Defendants (Michael Halliwell and James Parker) were present. In its final paragraph the October 7, 2008 Opinion states:

> Appellants fail to demonstrate any reversible error with respect to the September 25, 2007 attorney fee order or any order appealed from by way of Appellants' November 21, 2007 Notice of Appeal or Appellants' February 1, 2008 Notice of Appeal.
>
> Defendants' petition seeking reconsideration

of this order was ignored until (according to the Appellate Branch Order of November 17, 2008) it had lost jurisdiction to consider it. This Order adds: "Alternatively, the petition lacks merit and is denied on that basis."

## JURISDICTION

Defendants' February 1, 2008 Notice of Appeal was mainly aimed at Judge Chouteau's refusal to adjudicate key fees-related issues raised in Defendants' August 29, 2007 and September 26, 2007 Notices of Appeal. Charles Jensen (supported by Judge Elaine Rushing) has pretended that the August 29, 2007 Notice of Appeal is of no effect because it challenged a $10,000 fees award which Judge Rushing vacated and reissued (after banning any follow-up briefing in her Order of September 5, 2007). Charles Jensen and Judge Rushing also pretend that James Parker has no appeal from Judge Rushing's unexplained

September 25, 2007 Order, again granting Plaintiff $10,000 in attorney fees, because our September 26, 2007 Notice of Appeal was signed (in behalf of both Defendants) by only Michael Halliwell. Charles Jensen and Judge Rushing pretend that Michael Halliwell's indirect fees liability is insufficient to establish standing, so our September 26, 2007 Appeal is allegedly a legal nullity. This is contrary to California Rule of Court (CRC) 8.750(a). Charles Jensen refused to respond to Appellants' grievances raised in briefing pursuant to their February 1, 2008 Notice of Appeal, on the ground that such issues are Res Judicata.

Because of the evasive handling of Judge Rushing's September 25, 2007 fees Order (it was never served on the parties) it was within the 90-day appeal deadline pursuant to CRC 8.751(a), when Defendants renewed their appeal from the $10,000

fees award on November 21, 2007. Defendants' November 21, 2007 Notice of Appeal also sought to breathe life into another duly filed and paid for (October 17, 2007) Notice of Appeal, on which Judge Chouteau has not allowed briefing. Thus our November 21, 2007 Notice of Appeal states: "Defendants affirm that our October 17, 2007 appeal was intended to deal with the various denials of Due Process which affected the status of the official record." The California Supreme Court may clarify this convoluted appeal situation when it rules on S171792.

Should the California Supreme Court decline to exercise its power of discretionary review in deciding S171792, Defendants contend that the entire case should be subject to review (via 28 U.S.C. Sec 1257) on a Petition for Certiorari filed within 90 days of the decision on S171792. However, on January 21, 2009 (in S168827) the California

Supreme Court declined to review the refusal of the Court of Appeal to disturb the Order of October 7, 2008. **The basic foundation of the $10,000 fees award (compensation for legal work done in behalf of Plaintiff prior to July 3, 2007) might be construed to be outside the scope of S171792, and therefore have a *Certiorari* deadline of April 21, 2009. We address such matters in this Petition.**

On May 6, 2008 Judge Rushing awarded Charles Jensen an additional $20,720 in attorney's fees (entirely for reading Defendants' briefs relating to ongoing fees-related appeals). A remark made by Charles Jensen at the January 24, 2008 Appellate Branch Hearing, caused Defendants to suspect that the Sonoma County Sheriff had turned over to him $10,118 of their frozen assets (to satisfy the September 25, 2007 fees award plus interest). The

Sheriff finally confirmed the money turnover (after repeatedly insisting that Defendants "check the case file"), but refused for 3 ½ months to provide anything in writing about this turnover. Defendants' Appendix H (in S171792 proceedings in the First District Court of Appeal, on transfer there from the California Supreme Court) notes:

> The bottleneck was broken open on May 7, 2008 when the Sheriff's Civil Bureau Manager Elizabeth Warren agreed to release a copy of what Judge Rushing sent to effectuate turning over Defendants' frozen $10,118 to Charles Jensen. It turned out to be a copy of Courtroom Minutes of 11/20/2007 **SIGNED AND CERTIFIED ON NOVEMBER 26, 2007.** (Id. at 109:9-12)

This turnover was completely OFF THE RECORD as far as anyone inspecting the Case File of *Paxinos v Halliwell & Parker* could tell. Since it was NOT accomplished by Court Order, it is outside the scope of the Appellate Branch Order of October 7, 2008 (and S168827). The earliest filing deadline

for the **May 6, 2008** attorney's fee award (where discretionary review was denied in S169634 on February 18, 2009), is May 19, 2009. The **May 7, 2008** "smoking gun" is obviously an integrity of files issue, that certainly is part of judicial interference with Defendants' right to conduct their own case (in violation of *Gray v Justice's Court* (1937) 18 Cal.App. 2d 420, 423 and *Faretta v California* (1967) 422 U.S. 806, 812-813). Case management interference is the focus of Defendants' December 22, 2008 Notice of Appeal, for which the Appellate Branch has not yet set a briefing schedule.

## RELEVANT STATUTORY PROVISION

*Babb v Superior Court of Sonoma County* (1971) 3 Cal 3d 841, 851 provides for the issuance of a writ of mandate where "there is not a plain, speedy, and adequate remedy, in the ordinary course of law." This is the focus of S171792, which will be

pending for at least several weeks more in the California Supreme Court.

## STATEMENT OF THE CASE

The evasions noted above in the issuance of Judge Rushing's $10,000 attorney's fees award and the handling of review of this award by the Sonoma County Superior Court's Appellate Branch, are part of a broad pattern of denial of Due Process of Law and Equal Protection of the Laws.[a] If Defendants

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[a] As it happens, part of Judge Rushing's effort to hinder effective exercise of Defendants' right to appeal, came to a head at an April 14, 2009 Hearing before visiting Judge Dean Beaupre (who formerly served on Alameda County's Superior Court) on Judge Rushing's "vexatious litigant" initiative. Judge Beaupre has taken this matter under advisement and promised to issue a written opinion. Judge Beaupre's decision and the Hearing Transcript on which it is based are not available in time for inclusion in the Petition. However (because of time pressure requiring us to make use of the same documents in two proceedings), a Statement of the 25 Issues Presented here was made the focus of the Vexatious Litigant proceeding (since meritorious appeals are ipso facto not frivolous). This submission to Judge Beaupre is the accompanying Issues Appendix (Volume II). In addition, we provide a Footnotes Appendix (Volume III), consisting of Defendants' Appendix G provided to the California Supreme Court in S170538.

cannot secure federal review of the grievances in our Questions Presented, and California's higher appellate courts continue to turn a blind eye to the way California's "Secret Lawsuit" approach to contested evictions is applied in Sonoma County, the 90% of tenants in Unlawful Detainer actions who are self-represented will have no hope of justice, and arbitrary discrimination will continue to reign supreme.

**A. Abuse of Homeowner's Association CC & Rs**

The focus of the landlord/tenant conflict in this case is Conditions, Covenants and Restrictions (CC & R's) of the Meadow Pines Homeowners Association (#13), which bar tenants from participating in dispute resolution proceedings. Restrictive Covenants which eliminate the Sixth Amendment right to know the nature of charges which may become the basis for eviction (and did in *Paxinos v*

*Halliwell & Parker*) to confront one's accusers, amounts to a frontal assault on the Bill of Rights. This is an even worse abuse of basic constitutional rights than the racial discrimination that was mandated by California's restrictive covenants invalidated in *Shelley v Kraemer* (1948) 334 U.S. 1, 20:

> *The difference between judicial enforcement and non-enforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.*

The landlord's **March 30**, 2007 Notice to Quit (#19) came with a Notice (dated February 20, 2007) from the Homeowner's Association of a **March 26**, 2007 Hearing. Clearly the Best Evidence rule called for the actual hearing results, but instead the Complaint referred to charges James Parker was NEVER informed of, and was NEVER able to secure information about (in spite of many requests to the landlord,

his attorney, and the Homeowner's Association). The Complaint said "PER THE ATTACHED, THIS TERMINATION IS FOR CAUSE." The attachment said: "VIOLATION REPORTED: 'Ongoing threatening behavior of your tenant toward other residents.'" At trial, Charles Jensen abandoned any effort to show cause, and relied instead on the landlord's right to evict at will. There were also several other inconsistencies between Plaintiff's Complaint and his actual case (involving wording of the attached rental agreement and the nature of service), and Defendants tried to have the Complaint introduced as evidence of the duplicity of the landlord and his attorney, but Judge Rushing would not allow this. Judge Rushing insisted, without justification: "Sir, I have just made a ruling."

**B. Sonoma County's Trial Date Setting Policy**

Tenants are told on the Summons (and a

poster in the Hall of Justice) to rely on this source (www.courtinfo.ca.gov/selfhelp) for information on how to proceed in eviction proceedings (#4). The Judicial Council's website describes a process *which allows 5 days for a tenant to respond to a landlord's request before the court schedules a trial for the case.* But Charles Jensen admits: "Counsel for Respondent filed his request for trial at the window and was given (he did not request a specific date) the first possible trial date. This is how the Sonoma County Superior Court conducts this process. If a counter at-issue: is filed the Court can/has changed the date for trial if that is what is called for." (Reply Brief at 3)

Charles Jensen knows why this process prejudices defendants in Unlawful Detainer actions. On June 25, 2007 he said to Judge Rushing: "Your Honor, discovery in an unlawful detainer is based on the date **first** set for trial. That is the language of

the code section." (Transcript at 162:13-15, emphasis added.) This process is unfair to tenants (#6).

Michael Halliwell criticized trial date setting:

> It was patently obvious that if the Defendant answers on the 4th, the Plaintiff shows up on the 5th, and you set a trial date on the 6th, you don't really care what the other side has to say. It is obvious on the face of it. It looks to me like you let him just climb aboard [as] on a Law and Motion matter, like you ordinarily aren't able to do, you just take the word of the attorney what trial date he wanted and you gave it to him. (Transcript at 16:7-14)

Judge Nadler rebuffed Defendant's protest:

> We need to have an understanding with each other, Mr. Halliwell, you are now bordering in an area with your argument that I find to be disrespectful to this Court, and I'm going to warn you right now, sir, whether you are a lawyer or you are not, you are going to show this Court respect. By making accusations to the Court such as accusations of unfairness or something along those lines, sir, that is bordering on contempt of court. So I'm going to admonish you right now, you need to hear this very clearly, I will not sit here and I will not listen to those sorts of arguments. If you continue to make arguments like that, then I will find you in contempt of court. If I do that, sir, you are going to be facing the possibility of

> fines and/or jail time for each instance of contempt, okay? (Transcript at 16:15-17:1)

Sonoma County's biased trial date setting policy was aggravated by false claims of personal service (#9): *Parsons v Superior Court of Marin County* (2007) 149 Cal.App.4th Supp. 1, 6 notes this basic principle: "Strict compliance with the specifically prescribed notice conditions is a prerequisite to invoking the summary procedures of unlawful detainer." *Parsons* also notes that rules for a party's challenging the sufficiency of service should not be applied so as to construe this as a general appearance, because this "moots the very point he is seeking to raise." (*Delta Imports, Inc. v Municipal Court* (1983) 146 Cal. App. 3d 1033, 1036.)

Although she had admitted to never having conducted an Unlawful Detainer jury trial, Judge Rushing seemed confident that she knew the proper

way to handle one. Thus she said in her comments seeking to justify rushing through the Motions in Limine phase of proceedings: "In unlawful detainer actions, the time frames are much more truncated than in any other civil litigation for many reasons. The Court is bound to follow those rules." (Transcript at 447:3-6) Here is what the California Supreme Court has said about the underlying principle here in *Green v Superior Court* (1974) 10 Cal 3d 616, 636:

> The landlord contends, however, that the recognition of such a defense will completely undermine the speedy procedure contemplated for unlawful detainer actions. In the first place, however, while the state does have a significant interest in preserving a speedy repossession remedy, that interest cannot justify the exclusion of matters which are essential to a just resolution of the question of possession at issue. As the Court of Appeal observed in Abstract Investment Co. v. Hutchison (1962) 204 Cal.App.2d 242, 249. "Certainly the interest in preserving the summary nature of an action cannot outweigh the interest of doing substantial justice. To

> hold the preservation of the summary proceeding of paramount importance would be analogous to the 'tail wagging the dog.'" (CR-1255)

**C. Sonoma County's Ex Parte Application Rule**

In Sonoma County Unlawful Detainer actions (#1), tenants are restricted to Ex Parte (on the papers only) Applications during pre-trial proceedings. This procedure requires that statements of grievances be sent to the opposing party 24 hours in advance, with the landlord's attorney providing an opposing Declaration when he appears at the "hearing." This procedure provides no contact with the judge making the decision and no opportunity for a written response to the opposing Declaration. A similar affidavits-only denial of oral argument in Contra Costa County Family Court was stricken down in *Elkins v Superior Court* (2007) 41 Cal 4th 1337, 1354, where Justice Kennard cited *Goldberg v Kelly* (1970) 397 U.S. 254, 269, which affirms:

"Where credibility and veracity are at issue, written submissions are a wholly unsatisfactory basis for decision."

The consistent and total refusal of a landlord's attorney to discuss any aspect of the case or its proceedings with self-represented tenants was a direct violation of Local Rule 5.7D, when he opposes an Ex Parte Application. Under the very tight pre-trial time frame, Defendants were allowed only one follow-up to try to secure enforcement of Local Rule 5.7D. The Court's denial of this follow-up Application claimed "not to understand the relief sought," and ruled against Defendants because "the moving party will have an opportunity to present defenses at trial." Charles Jensen's non-communication policy has been a vexing problem throughout the case, because it allowed him to make evasive statements,

which he would have been forced to correct and/or justify in response to our inquiries.

**D. Lack of Meaningful Discovery Opportunity**

*Rosales v Thermex-Thermatron, Inc.* (1998) 67 Cal. App.4th 187, 199 affirms: "Litigation is supposed to be a search for truth."(#3) *Rosales* is cited in a Bar Association Resolution against concealment tactics:

> It is one of the intended purposes of the discovery statutes in California to avoid trial by surprise and ensure that the outcome of the trial will be deter-mined by a fair balancing of all the facts, rather than by the precariousness of keeping one party guessing as to another party's intentions.

Charles Jensen acted as if he had never heard of California Attorney Guidelines of Civility and Professionalism (#10) (calbar.ca.gov.). Guideline #9 says: "*Attorneys are encouraged to meet and confer early in order to explore voluntary disclosure, which includes identification of issues, identification of persons with knowledge of such issues, and exchange*

*of documents." Greyhound Corp. v Superior Court* (1961) 56 Cal 2d 355, 376 observes: "Certainly, it can be said, that the Legislature intended to take the 'game' element out of trial preparation while yet retaining the adversary nature of the trial itself. One of the principal purposes of discovery was to do away 'with the sporting theory of litigation – namely, surprise at the trial.' (*Chronicle Pub. Co. v Superior Court* (1960) 54 Cal 2d 548, 561.)"

Allowing documented charges of perjury to be brushed aside, thereby providing a basis for the elimination of fact-finding from the case, violates the principle set forth in *Hall v Superior Court* (2005) 133 Cal.App.4th 908, 919:

> Court rules should be designed to accomplish the ends of justice, to protect rights, and to implement the substantive law. When a policy, practice or rule operates instead to defeat these purposes, and deprives an accused of a fair trial or determination on the

merits, then the policy, practice or rule must give way.

**E. File Tampering Used to Prevent Discovery**

Defendants cite Misrepresented Filings (#5):

> Leaving aside the serious matter of how Mr. Jensen's BRIGHT BLUE form UD-150 could have been over-looked in the Case File on June 11, 2007 (when Defendant Mike Halliwell had a deputy clerk photocopy all fourteen pages in the file not submitted by Defendants, and initial "C.O." to verify that there were only these fourteen pages not submitted by Defendants, and so attested in his affidavit of that date), the fact remains that **form UD-150 and every applicable precedent contemplates that the other side will have up to five days to submit a Counter-Request BEFORE any decision is made setting the case for trial.**

Dr. Halliwell's June 17, 2007 affidavit notes:

> **On Friday afternoon June 8, 2007 an *Order & Notice of Trial Unlawful Detainer* in CHRYSANTHE E. PAXINOS vs. MICHAEL J. HALLIWELL, ET AL arrived at Defendants' address (postmarked June 7, 2007). This Notice said a trial had been set for June 19, 2007 at 8:30 AM. If somehow Michael J Halliwell reacted with lightning speed and got off an interrogatory seeking the name of the anonymous**

> **complainer mentioned in the February 20, 2007 Notice of a March 26, 2007 hearing attached to Plaintiff's March 30, 2007 Complaint, it would have arrived in Monday's (June 11, 2007) mail at Mr. Charles Jensen's office. He might have waited until his response deadline on June 16, 2007 and not answered at all (since discovery closed on June 14, 2007). He might have said he didn't know, or he might have actually supplied the name of the person who complained about Mr. Parker's "threatening behavior." It wouldn't have made any difference as it was too late for any follow-up. (CR 74-75)**

**F. Frivolous Attack on Right to a Jury Trial**

On June 21, 2007, Judge Nadler reversed himself and granted Defendants a jury trial, but our case was damaged by the struggle it took to obtain this basic Seventh Amendment right (#8). Judge Nadler deprived Defendants of ¾ of the time allowed by Local Rule 4.10H(1) for the filing of proposed jury instructions.

Moreover, Judge Rushing went along with Charles Jensen's June 25, 2007 attack on the format

of Defendants' submission: "They are in some form of a legal treatise, but they're not – they're not BAJI. They're not CALJIC." (Transcript at 166:23-25) Judge Rushing ruled that the lack of a timely submission by Defendants in the proper format constituted "a waiver of their right to submit anything in the form of a written statement to be read or the jury instructions. That time has come and gone." (Ibid. at 169:21-23)

Since Charles Jensen's frivolous challenge to Defendants' right to a jury trial was the reason that the trial had to be postponed, discovery should have been reopened to force Plaintiff to answer Defendants' Interrogatories (#11). Defendant's July 22, 2007 Affidavit re Misconduct of Plaintiff's Counsel says:

> There is no such thing as a legitimate "sneak attack" in the law, and the spirit embodied in CCP Sec. 2033.220(a) should be reflected in

> discovery and every other aspect of presenting the facts of a case: "Each answer in response to requests for admission shall be as complete and straightforward as the information available to the responding party permits." The California Judicial Council (under the mandate of CCP Sec. 2033.710 in developing UD-106) has sought to make sure that a landlord's "hidden intentions" do not remain so, with Form Interrogatory 77.1 which says: "State all reasons that the **NOTICE TO QUIT** was served or that defendant's tenancy was not renewed and for each reason [details omitted]. Form Interrogatory 71.7 says: "Has any **PERSON** ever reported any nuisance or disturbance at or destruction of the **RENTAL UNIT** or **PROPERTY** caused by the defendant or other occupant of the **RENTAL UNIT** or their guests? If so, for each report state [details omitted].

In *Fairmont Insurance Co. v Superior Court* (2000) 22 Cal 4th 245, 251, the California Supreme Court speaks approvingly of the resetting of the discovery time clock endorsed in *Beverly Hospital v Superior Court* (1993) 19 Cal.App.4th 1289, 1293: "It is also consistent with the legislative history of the provision and the Civil Discovery Act of 1986 of

which it is part, which indicate that the purpose of the statute was to eliminate a source of discovery abuse and unnecessary trial delays caused by parties seeking continuances or postponements of trial for the sole purpose of extending the time for discovery." There is nothing more certain in the case at bar than that Charles Jensen's no-notice June 19, 2007 challenge to Defendants' right to a jury trial was NOT motivated "for the sole purpose of extending the time for discovery."

Charles Jensen's temporarily successful attack on Defendants' right to a jury trial had a further debilitating effect, laying the foundation for escalating attorney's fees (#7). After Judge Gary Nadler indicated he intended to reject Defendants' demand for a jury trial, he operated off the record as a mediator, to try to arrange a settlement whereby Defendants would drop their opposition to eviction,

in exchange for being given a reasonable time to find another place to live. Even though Local Rule 2.2E set the allowable attorney's fee for a normal court trial at $375, and no trial had yet been conducted, Judge Nadler made no objection when Charles Jensen demanded an UNREVIEWABLE $4,000 payment as a condition for ending the lawsuit. In subsequent briefing, Defendants made the point that Charles Jensen was placing his own interest in fee generation ahead of his client's interest in regaining possession of the disputed premise. However, Judge Rushing would not allow Jensen's insistence on an exorbitant, unreviewable fee to be cited by Defendants' as evidence of improper motivation. Thus, in June 25, 2007 pre-trial proceedings, Judge Rushing ruled:

> Then there was some discussion in your brief about settlement discussions. That is absolutely forbidden. There's to be no mention,

> none, of any offers made by anyone to settle this case prior to coming to trial today in front of the jury. That would cause a mistrial, which would require me to excuse everybody who has come over, and I would assess sanctions in terms of fines against anyone who causes a mistrial after being warned, okay? (Transcript at 154:28 to 155:7)

**G. Improper Restrictions in Jury Instructions**

After using Charles Jensen's second challenge to the Defendants' right to a jury trial as a vehicle for refusing to consider any corrections to our proposed jury instructions, Judge Rushing told us why she was discarding our proposals: "The document that you submitted is not – I mean, there are things in it that could be used as jury instructions, but that's – you're making me do a lot of work for you and that's not my job." (Transcript at 175:18-21) (#12) This sort of bending the rules to favor Plaintiff became an issue in Appeal Briefing (for a January 24, 2008 hearing on jury trial issues): Charles

Jensen's Reply Brief (at 7) notes: "Judge Rushing doesn't have to assume an attorney is correct." Appellants agree, but nevertheless she said early in proceedings before her: "**I've never tried an unlawful detainer case, a jury trial, so if there's any difference of what I'm saying, I expect Mr. Jensen to speak up.**" (Transcript at 163:23-26)

Defendants' Transcript Excerpts quote a June 19, 2007 hearing debate about the scope of *Marina Point v Wolfson* (#14). Defendant Michael Halliwell argued:

> Within the governing precedent, I think *Marina Point v Wolfson* is still good law, having been affirmed by the state Legislature. explicitly in the course of this amendment I'm citing, it says in *Marina v Wolfson* in negating the exclusionary policy in this case, you must recognize at the outset that in California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment or [homeowner's] discretion to accept and reject tenants on the basis of the landlord's own likes and dislikes. This is directly out of the governing precedent recently affirmed

> explicitly by the Unruh Act [amendment] by the Legislature.

Charles Jensen insisted that only discrimination against children is covered by *Marina v Wolfson*:

> I have listened to this charade all day long. It is the only anger I'll express. If people wish to quote the law, they should quote it correctly, whether they are an attorney or a law student, or a defendant. *Marina v Wolfson* and its companion case, not surprisingly *Wolfson v Marina* has to do with discrimination of children, period. The only dicta that was given to this court is just that, dicta, it is not the holding of *Wolfson*. *Wolfson* very clearly said you can no longer rent to so many adults and so many children if they breathe air. They are persons, and that's why [in] 1982 CAA, California Apartment Association and the PBC people changed all the rental agreements and it now says people. To quote *Wolfson* for other than that is to intentionally and knowingly mislead the Court. The Court is dead on the money with the application of Unruh, and its nonapplication in this case. (Transcript at 81:25-82:13) (CR-1166)

One can read all of Judge Rushing's jury instructions, and not realize that California has any fair housing laws. Judge Rushing did recognize that

retaliatory eviction is illegal in California, but she unfairly limited this aspect of Defendants' case (#15). Defendants cite Appeal Briefing (for the January 24, 2008 jury trial Appeal Hearing). Charles Jensen stops short in his quotation of Civil Code § 1942.5(a) just after listing "has given notice" as triggering a six month burden of proof obligation, while leaving out two other crucial benchmarks. Thus Defendants' Reply continues (at CR-1519):

> Charles Jensen realizes that 180 days before his seeking to recover possession of 1041 Copeland Creek Drive in an unlawful detainer action or proceeding (on June 1, 2007) is a viable "evidence window" and so is the 180 days before his causing the lessee to quit involuntarily (on July 5, 2007). In other words, Plaintiff's attorney knows that all of the evidence excluded by Judge Rushing because it was "too recent" should have been allowed to be introduced.

Judge Rushing ruled that the jury could not consider whatever role was played by Mr. Paxinos in post-notice concealment of the nature of complaints

against James Parker. She said: "Well, his actions taken since the notice are irrelevant." (Transcript at 278:28 to 279:1).

Judge Rushing also refused to admit any evidence relating to arbitrary discrimination against Defendant Michael Halliwell. After a series of attempted questions and objections relating to whether Gus Paxinos would have wanted to do a credit check on any replacement for Mr. Howard and why no attempt had been made to inquire about the creditworthiness of Mr. Halliwell, the witness was asked this question about the basis for his attempting to evict him by Michael Halliwell: "In exercising your right to elect to allow me to stay or not to stay, did you make any inquiries whatsoever from any source whatsoever about any characteristic whatsoever of Michael Halliwell?" (Transcript at 224:6-9) Charles Jensen intervened: "Objection,

Your Honor. Relevance." (Ibid. 224:10) Judge Rushing ruled: "Sustained." (Ibid. 224:11) Michael Halliwell responded: "I'm asking him about his decision making process; this is a discrimination case, and I don't understand how it could possibly be irrelevant, [asking] how he is exercising his discretion." (Ibid. 224:12-15) Judge Rushing replied: "I'm sustaining the objection." (Ibid. 224:16)

**H. Anonymous Hearsay Shielded from Scrutiny**

Judge Rushing ignored the Rules of Evidence (#17): *In re Michael G.* (1993) 19 Cal.App.4th 1674 notes:

> Evidence Code section 1200 provides, in pertinent part: "(a) 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at a hearing and that is offered to prove the truth of the matter stated. (b) Except as provided by law, hearsay evidence is inadmissible."
>
> The purpose of the "hearsay rule" is to preserve a party's Sixth Amendment right to confront and cross-examine an adverse witness and to disallow testimony coming from a witness who is not under oath and

whose demeanor cannot be observed by the trier of fact. (19 Cal.App.4th at 1677)

Defendants' 12/7/07 Transcript Analysis observes:

Judge Rushing did not appear to be much concerned about such principles [prohibitions in Evidence Code Sec 1200 against hearsay], since she responded to Michael Halliwell's invocation of the Sixth Amendment (which mandates every court in this nation to respect these fundamental rules of evidence) by ruling: "It is irrelevant." (Transcript at 351:18) In a government of laws, not men and women, respect for the Constitution must transcend respect for any judge determined to brush aside such considerations.

In an effort to appeal to the sense of fundamental fairness of jurors, Michael Halliwell said (in a tone of voice that left little doubt as to whether he thought judicial prerogatives should take precedence over the Bill of Rights): "The Sixth Amendment is irrelevant. Fine." (Transcript at 351:19) Judge Rushing nipped in the bud any thoughts Michael Halliwell might have had of mentioning the California Evidence Code, with this response (Transcript at 351:20-25) to his allusion to the Bill of Rights: "You know what, Mr. Halliwell, I'm going to stop you from making those comments anymore in this courtroom. When I make a ruling that something is irrelevant, you don't comment to the jury that the Sixth

> Amendment is irrelevant, and I consider that contemptuous behavior. I won't tolerate it." (CR-1417)

Judge Rushing explained her refusal to rule on Defendants' exclusionary motion (directed at surprise evidence within the ambit of Form Interrogatories 71.7 & 77.1):

> Normally – let me just explain something. We're in the middle of a jury trial. I never have jurors outside waiting. This is not the time to do this. That's not what we do to jurors. I never keep jurors waiting. I don't care what anyone wants to file, and I don't know that these are fileable, in proper form or whatever, but I'm just telling you right now, once a jury trial started – you wanted the jury, you have got them. They are out there. I'm not keeping them waiting. We're going to put on the case. If there's a break, we can let them go later, and I can consider some papers if you would like. (Transcript at 316:23 to 317:5)

Defendants were not successful in changing Judge Rushing's unwillingness to protect what they viewed as their evidentiary rights, but she seemed to have second thoughts about keeping our efforts out

of the record, when she made this offer the next day: "We are going to stay on the record to permit the parties to place on the record anything that was said at sidebar that wasn't argued on the record." (June 26, 2007 Transcript at 442:8-10) Defendant made the handling of Exhibit 5 the first issue he raised, although he could not remember its number: "I had a motion to strike the March 28th letter with the redactions in it that – I'm not sure of the exhibit number. March 28th should identify it clearly enough. On the grounds that it was improper due to the anonymous nature of the complaint and other procedural reasons." (Ibid. at 442:23-28) Judge Rushing addressed every OTHER issue raised by either side, but then backed off from trying to justify her handling of Exhibit 5. She ended the discussion by saying: "I'm not making any further rulings than that. We are going to be in adjournment." (Ibid. at 447:18-20)

Defendants' 11/26/07 Transcript Analysis observes:

> Judge Rushing [as part of document dump which Defendant described at the time: "They just dumped a pack of letters, undifferentiated, saying here's 24 letters, plop." (Transcript at 242:27-28)] admitted a report filled with third-hand hearsay complaints made by unspecified persons, compiled into a report by an anonymous person, and put into evidence as a result of it being conveyed by a third person (not available for cross examination) who wrote on the bottom of the anonymous report "This was submitted by a neighbor." (Exhibit 5, filed by Defendants after trial at CR-144). However, when Michael Halliwell asked James Parker (Transcript at 299:21 to 300:6) about a communication to him by "Chris and Christine, the people who lived next door to me," he was not allowed to answer this question: "Did either of these people ever communicate with you that they received any satisfaction on this basic grievance?" Charles Jensen interrupted at this point, saying: "Objection, Your Honor. Any response will be hearsay." Judge Rushing responded: "Sustained." (CR-1239)

Defendants' December 7, 2007 Transcript Excerpts further documents Judge Rushing's shielding of Exhibit #5 from full examination (#18):

> Judge Rushing interrupted James Parker's discussion of Exhibit #5 (Transcript at 355:17-18) and Michael Halliwell protested: "I want to go through the evidence." (Ibid. at 355:19) Judge Rushing responded: "Actually, sir, I have the right to control the means and manner, and also there's an Evidence Code section called 352 which prevents repetition and cumulative evidence and things that are more time consuming than probative. The jury is only here for a limited time. We need to get through the rest of this case." (Ibid. at 355:20-26) Michael Halliwell responded: "Considering the critical nature of this document, I'd like to be able to go through it line by line. Are you ruling that out? (Ibid. at 355:27 to 356:1) Judge Rushing answered: "I am." (Ibid. at 356:2) (CR-1421)

Charles Jensen stressed the decisive role of the March 28, 2007 letter from the Homeowner's Association conveying a compilation of hearsay complaints (with all of the names redacted), with the sole identification "submitted by a neighbor about Resident 1041." He asked the landlord: "Was there any other reason that you served the 60 day notice other than what's in that letter?" Gus Paxinos re-

plied: "No." (June 26, 2007 Transcript at 378:316-18)

**I. Evasive Procedure to Impose Fees Judgment**

Judge Rushing was determined to ignore what James Parker said in opposition to awarding ANY attorney fees to Plaintiff (#20). James Parker's supposedly non-existent Opposition points out (at CR-416) why Charles Jensen was entitled to NO fees at all, because Jensen explicitly stated that his theory of the case was NOT seeking to prove cause, i.e., a violation of the rental agreement, "because the code section says no cause is needed" (see June 25, 2007 Transcript at 172:25 to 173:3). Parker cites *Walters v Marler* (1978) 83 Cal.App.3d 1, 27-28, quoting *McKenzie v Kaiser-Aetna* (1976) 55 Cal.App.3d 84, 89-90, rejecting the idea that the Legislature in enacting Civil Code sec 1717 meant to include "all provisions in the contract allowing for attorney's fees, whether or not those fees are

incurred to enforce the provisions of the contract." It states that the only reasonable interpretation of section 1717 is "the allowance of attorney's fees only when such fees are incurred to enforce the provisions of the contract." Parker's August 22nd Memorandum points out: "The jury has found NO breach of contract and the contractual language (clause #13 in the rental contract allows attorney's fees only 'to enforce any part of this agreement.')"

When a hearing was held on Plaintiff's $10,000 attorney fees motion, Charles Jensen followed his uniform policy in fees matters, of saying NOTHING (#21) about the underlying merits. Before the September 25, 2007 fees hearing took place, Charles Jensen made a determined effort to win by evasive maneuvering, which flouted Local Rules: **a)** Plaintiff's attorney refused to "meet and confer" to discuss possible settlement "in accordance

with applicable law" (as required by Local Rule 5.5); **b)** Charles Jensen refused to bring his July 3, 2007 fees motion before the court by listing the known (August 28, 2007) time and place of the hearing on the face sheet (as required by Local Rule 18.8); and **c)** he did not provide an endorsed filed copy of the motion when filed (promised by a July 3, 2007 letter of conveyance, that described its document, as an unfiled motion being given to Defendants to facilitate negotiation over the amount of fees).

Charles Jensen's evasions violated a basic principle cited from *Adams v Murakami* (1991) 54 Cal 3d 105, 120:

> The issue is not merely a question of trial strategy. As our former colleague Justice Peters aptly put it, "**The trial of a lawsuit is not a game where the spoils of victory go to the clever and technical regardless of the merits**, but a method devised by a civilized society to settle peaceably and justly disputes between litigants. The rules of the contest are not an end in themselves." (*Simon*

*v City of San Francisco* (1947) 79 Cal.App.2d 590, 600)

Charles Jensen lied to support his fees award (#22):

In his [3/29/07] proposed JUDGMENT AFTER MOTION, Charles Jensen states: "Defendant JAMES PARKER did not oppose the motion." There is no doubt that Mr. Jensen knows that this statement is FALSE. Jensen probably ordered Mr. Blonski to sever e-mail communications with Defendants, but that did not prevent his becoming aware of Defendants' e-mail in spite of this ban (CR-458) sent 9:24:54 on Mon, 27 Aug to kadinblonski@hotmail.com captioned "Attention Charles Jensen." The first sentence of this e-mail states: "Today's Court Filing provides one attached new document (dated August 27th infra, and the August 22nd documents infra, previously sent to you via e-mail only)." Mr. Jensen certainly knows (since he had six full days to study these documents before the hearing) that the listed "August 22, 2007 DEFENDANT'S REVIEW OF SUBTERFUGES RELATING TO ATTORNEY'S FEES" was not accidental in its use of the singular in "DEFENDANT'S" and that **the Defendant who signed this August 22, 2007 Opposition to Charles Jensen's fees motion was JAMES F. PARKER.** (James Parker's September 1, 2007 Affidavit at CR-523 to CR-524)

Judge Rushing postured at her 8/28/07 hearing (#23):

Judge Rushing said when she vacated her Tentative Ruling that she "inadvertently" overlooked that she had informed the parties that there would be no tentative ruling in the case. This inadvertence was deliberate since Judge Rushing certainly saw that Charles Jensen and the Defendants both showed up on August 28, 2007 expecting a hearing to take place. (We were in the front row and had announced our presence to the clerk in Courtroom 19.) Judge Rushing rearranged the order of cases posted outside the courtroom that day, so that as she called one by one all the cases listed after MCV 191306 were completed, before she called a recess and swiftly left the courtroom. When I stood up and clearly said "Your Honor," the bailiff demanded that I immediately go out into the hallway. I informed the bailiff that Judge Rushing's own order said that there would NOT be a tentative ruling and that mandatory appearances would be required, and offered to show him the order. The bailiff went back and checked with Judge Rushing, and returned with an order that we leave the premises at once or be arrested. (Michael Halliwell's September 25, 2007 Affidavit at CR-707 to CR-708)

Judge Rushing tried to PREVENT James Parker from curing the "defects" of memoranda opposing an award of attorney's fees

> which were submitted by Defendant Halliwell, by resubmitting the same arguments in his own name. Her Order of September 5th states: "No further papers of any kind will be permitted to be filed on this motion prior to the next hearing date of September 25, 2007." As Appendix B Transcript Analysis notes (at 6:15-16) when James Parker came to the September 25, 2007 hearing and said "I have some papers to put in, if I may?" Judge Rushing replied "No, it's too late for that, sir." (Transcript at 330:26-28) (Appellants' April 18, 2008 Petition at 14:8-17)

Judge Rushing conducted a September 25, 2007 "silencing" instead of a hearing (#25). She proclaimed: "I am sorry, Mr. Halliwell, I'm not going to permit you to say anything in this argument at this hearing." (Transcript at 466:28 to 467:2) Michael Halliwell responded: "Not even on the central issue of whether I should be allowed to speak?" (Ibid. at 467:3-4) Judge Rushing replied: "No, it's the same rule." (Ibid. at 467:5) Michael Halliwell continued: "Well, I believe Your Honor is mistaken. I object for the record." (Ibid. at 467:6-7)

Judge Rushing terminated the discussion: "Mr. Halliwell, I've just made my ruling." (Ibid. at 467:8)

After trying to blame Defendants for the two prior hearing postponements, Judge Rushing ruled: "I don't see the basis for a continuance." (Transcript at 475:7-8) Judge Rushing would not allow James Parker to explain why Defendant Halliwell was not acting as an attorney, but as an equally injured Defendant under their equal cost sharing agreement. Charles Jensen had previously said: "Plaintiff has no oral argument to offer the Court." (Transcript at 472:21-22) So, Judge Rushing shut down the fees hearing without saying a word about the merits:

> The Court is deeming the matter submitted at this time, is denying the request for a continuance for the reasons already stated and is ordering that the plaintiff may have $10,000 in attorney's fees against Mr. Parker only. (Transcript at 475:27 to 476:2)

At the next fees hearing (on the day after

Defendants cited this ruling in Appendix B), James Parker asked Judge Rushing: "Since the Court has never cited any case law as to why Michael Halliwell has not been allowed to speak, I would ask the Court to cite some case law as to why not." (May 6, 2008 Transcript at 5:10-12) Judge Rushing replied: "I'm not required to do so and I decline that request." (Ibid. at 5:13-14.)

At the November 20, 2007 Claim of Exemption hearing re the $10,000 fees judgment (#24), Charles Jensen cited nothing to contradict the holding of *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 654-655, and CCP Sec 917.1(d) that a judgment consisting only of attorney's fees and other costs was not enforceable during the pendency of an appeal, without the appellant having to post an under-taking (appeal bond). It turned out that Charles Jensen's ground for opposition was an attempt to do

an end run around CRC 8.750(a) that requires Notices of Appeal to be liberally interpreted in favor of their sufficiency. In spite of James Parker's totally unambiguous support for Defendants' appeals from the $10,000 attorney's fees award, Charles Jensen was able to convince Judge Rushing that Defendants' appeal from the initial award of the $10,000 should be ignored, because it was vacated and reinstated after the appeal. This is a direct contradiction of *Grant v List & Lathrop* (1992) 2 Cal.App.4th 993, 997. Charles Jensen convinced Judge Rushing to disregard Defendants' appeal from the renewed award of the $10,000 on the ground that only Defendant Halliwell had signed it. This quibble is rejected in *Ehret v Ichioka* (1967) 247 Cal.App.2d 637, 640-641. Judge Rushing further trampled on the rule of law by refusing to allow James Parker any opportunity to respond to Charles Jensen's

grounds, once they had been disclosed at the hearing. This was a direct violation of CCP Sec 703.580 (a) & (c).

## REASONS FOR GRANTING CERTIORARI

How marvelous it would be, if the state of siege described above was the full extent of Defendants' legal ordeal. In fact, Defendants continue to face an ongoing attack which has increased their attorney's fees liability by a factor of five. Order of Examination Proceedings (OEX) have twice involved threats of a contempt of court jail sentence for exercising our State appellate rights. Only at the last minute did Judge Robert S. Boyd pull back (in his Orders of July 23, 2008 and January 20, 2009) from trying to enforce his unlawful orders (issued in violation of California Code of Civil Procedure Sec 916(a)). Recently James Parker **was sent to jail for defending his right to file this Petition, and**

**refusing to accede to flagrant violations of his right to Due Process of Law**. Judge Rushing has launched a "vexatious litigant" initiative against Defendants, designed to penalize us for exercising our right to appeal, **and timed to divert our energies from preparation of this petition.**

The accompanying Footnote Appendix provides the complete text of the only substantial Court Order (of March 6, 2008) in the case. All of the key orders making and upholding the $10,000 fees award have been quoted in previous sections. All of the orders denying discretionary review have said only "The petition is denied." Our Footnote Appendix provides a thorough analysis of every point in the Order of March 6, 2007. Footnote 107 gives the text of the ONLY defense Charles Jensen has given for any of the Appellate Orders or decisions not to grant discretionary review in this case. <u>The **only**</u>

**defense** to our charges ever made by Charles Jensen, has been to point out the number of pages it takes to document our grievances. **However**, on the crucial point of length limitation, the California Supreme Court has moved to the point of being fully supportive of our unusually long submissions.

Defendants never had an opportunity to present their main defense against eviction[33], that excluding tenants**[35]** from CC & R enforcement proceedings violates *Shelley v Kraemer* (1948) 334 U.S. 1, 20 (which bars enforcement of restrictive covenants that undermine fundamental rights). Key evidence of the landlord's retaliatory motive was improperly excluded because it was too recent.**[34]** Sonoma County's policy of setting the trial as early as possible**[28]** violates the process which tenants are told to rely upon**[42]**, and has the effect[10] of eliminating discovery.**[56-57]**

Proof of perjury re service of papers[7] was ignored as was our appeal on this issue.[11] This paved the way for the admission[32] of an anonymous compilation of hearsay complaints[30] in spite of Defendants' motion to exclude it. The fulcrum[44-46] for many of these reversible errors[4] was Plaintiff's frivolous challenges to our right to a jury trial, which somehow translated into a ruling restricting[87-88] and ultimately eliminating any input from Defendants re jury instructions.[47-48]

The strict compliance with notice procedures[60-62] necessary[14-15] to invoke expedited procedures in eviction lawsuits[64], was vitiated by an Appellate Branch ruling[53-55] that ignored violations of Judicial Council mandates[43] and Local Rules.[36] The Opinion of March 6, 2008 refused to consider caselaw[58-59] defining the

difference between special and general appearances.**[105-106]**

The linch-pin of the Opinion of March 6, 2008 was the subtenancy aspect of the case, which Plaintiff pressed in proceedings before Judge Nadler and then abandoned.**[1]** When the case was transferred to Judge Rushing, she ruled out any evidence**[8-9]** related to this aspect of the case. In fact, Plaintiff gave up trying to prove any cause**[21]** and won a verdict based on a landlord's right to evict at will. Without any proven contract violation**[16]**, California Civil Code Sec 1717 barred ANY award of fees. Judge Rushing improperly denied Michael Halliwell's standing on the fees issue**[101-104]**, and refused to allow James Parker to replace**[2]** briefs filed by Halliwell. There was no basis for keeping the lawsuit alive, just for the sake of generating fees**[98-100]**, no basis for claiming**[20]** that James

Parker failed to appeal the fees issue**[96]** and no basis for the Appellate Branch to "reach out"**[19]** and affirm the unbriefed fees aspect of the case.**[94]**

All of Defendants' main grievances have a significant basis in federal constitutional and statutory law. Defendants had no control over timing of fees motions, the resulting timing of state appeals, and federal appeal deadlines. Defendants ask their federal rights not be allowed to "slip through the cracks" because of our inability to consolidate the case without missing an appeal deadline.

We cannot predict how the California Supreme Court may rule on those procedural "entanglements" in S171792. However, our deadline for this appeal is now, so we ask the U.S. Supreme Court to preserve the federal reviewability of Defendants' grievances to the extent necessary to eventually allow federal review of our entire case.